IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

RP.No. 342 of 2006

AGAINST THE ORDER IN CRP.1099/2000 Dated 20/12/2004 (E.P.NO. 50/1998 IN O.S.NO. 403/1992 OF SUB COURT, KATTAPPANA)

REVIEW PETITIONER/PETITIONER:

K.J. ANTONY, S/O. JOSEPH,
KOLLAMPARAMBIL HOUSE, ATTAPPALLAM KARA,
KUMALY VILLAGE.

BY ADV. SRI.C.K.VIDYASAGAR

RESPONDENTS:

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1. S. MOHANDAS, ARUN NIVAS,
KUMILY KARA, KUMILY VILLAGE.

2. K.R. OMANA, W/O S. MOHANDAS,
ARUN NIVAS, KUMILY KARA,
KUMILY VILLAGE.

BY ADV. SRI.M.C.MADHAVAN
SRI.MAHESH MADHAVAN

THIS REVIEW PETITION HAVING BEEN COME UP FOR ADMISSION ON 03/01/2007, THE COURT ON 8-1-2007 PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

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R.P.NO.342 OF 20006
IN CRP.1099 OF 2000
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Dated this the 8th Day of January 2007

ORDER

The review petition is filed by the court auction purchaser in E.P.No.50/98 in O.S.No.403/1992. It is pointed out that this Court has overlooked the provision in Section 37 (b) of the Code of Civil Procedure as per which " where the Court of first instance has ceased to exist or to have jurisdiction to execute it(the decree), the Court which, if the suit wherein the decree was passed was instituted at the time of making of application for the execution of the decree, would have jurisdiction to try such suit." The execution court had relied exclusively on Section 38 C.P.C. and held that it is only the court that passed the decree shall have jurisdiction to execute the same or the court to which the same has been transferred. The same was upheld by this Court. Evidently, the error has crept in the above order as Section 37 (b)C.P.c.was not specifically considered. Further, in fact, the execution was almost over and the decree schedule property was sold in court auction and what is sought to be obtained is only delivery of the property purchased in court auction. The contingency arose as

the area in which the property is situated subsequently happened to be within the jurisdiction of Subordinate Judge's Court, Kattappana, which was constituted subsequently. The rest of the proceedings took place at Sub-Court, Thodupuzha. I find that Section 37(b)C.P.C. is meant to cover the above situation and hence the provision is squarely attracted. Hence, the order of this Court in C.R.P.No.1099/2000 is reviewed herewith. It is held that the Subordinate Judge's Court, Kattappana is having jurisdiction to proceed with the matter and that the petition is not to be sent to the Sub Court, Thodupuzha which passed the decree.

In the result, the review petition allowed.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J
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R.P.NO.342/2006 IN
C.R.P.NO.1099/2000

ORDER

DATE: 8-1-2007

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